

ORIGINAL

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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In Propria Persona

UNITED STATES DISTRICT COURT

STATE OF HAWAII

HOWARD HOFELICH

Plaintiff

Civil No.

CV 11 00034 BMK

vs.

STATE OF HAWAII,
STATE OF CALIFORNIA, STATE OF ILLINOIS,
UNITED STATES COAST GUARD VESSEL
DOCUMENTATION CENTER, STATE OF
HAWAII DEPARTMENT OF PUBLIC SAFETY
HAWAII SHERIFFS DEPARTMENT,
RONALD IBARRA, ELIZABETH STRANCE;
ROBERT HOFELICH, BERNADETTE CHOCK,
STEVE WHITTAKER, DAVID KAAPU,
CARL VINCENTI, OCEAN CONCEPTS SCUBA
LLC; JACKS DIVING LOCKER, INC.
PROFESSIONAL ASSN OF DIVING
INSTRUCTORS, INC. AKA "PADI";
SCUBA DIVING INTERNATIONAL, Inc. (SDI)
GENTRYS KONA MARINA, INC; HAWAII
DEPARTMENT OF LAND AND NATURAL
RESOURCES; ERIC MORTON, M.C. RICK
NORTON,
DENNIS KRUEGER, STEPHEN WHITTAKER;
DAVID LACY, DAVID KAAPU; MARK MCSHANE)
JAMES PROPOTNIK; JODIE MAESAKA HIRATA)
HYDRO-TEST Inc. , TOM SAUTA;
UNIVERSAL MEDICAL MANAGEMENT LLC;
AMERICARE FINANCIAL LEGAL LIEN LLC;
DOE LIMITED LIABILITY CORPORATIONS;

COMPLAINT FOR FRAUD (RICO);
RACKETEERING, MAIL FRAUD;
WIRE FRAUD;
VIOLATION OF 4TH AND 14TH
AMENDMENTS; VIOLATION OF
PUBLIC LAW 100 "SERVICE-
MEMBERS CIVIL RELIEF ACT",
FALSE STATEMENT, FRAUD ON
THE COURTS OF CALIFORNIA
AND HAWAII AND ON THE
STATE OF ILLINOIS; DEMAND
FOR EXPEDITED JURY TRIAL

SUMMONS

ORIGINAL

CLARK COMMERCIAL REALTY INC.)
GREGORY OGIN;)
GOVERNMENTAL ENTITIES 1-10;)
JOHN DOE ENTITIES 1-10;)
JANE DOE ENTITIES 1-2;)
CORPORATION ENTITIES 1-5;)
TRUST ENTITIES 1-2)
Defendants)

COMPLAINT FOR FRAUD (RICO) AND RACKETEERING

1. PLAINTIFF IS AN ILLINOIS RESIDENT and was A UNITED STATES NAVY
SERVICEMEMBER entitled to immunities of the Servicemembers Civil Relief Act.
2. THIS ACTION AND COMPLAINT for monetary damages against each and every
defendant is brought pursuant to the multiple and **repetitive violations of federal
racketeering statutes to include mail fraud, wire fraud, securities fraud, and contract
fraud** by defendants, violations of the United States CONSTITUTION to include
deprivation of rights enumerated as the Fourth (4th), Fifth (5th) Eighth (8th), and Fourteenth
(14th) Amendments , and common and statutory LAWS of the States of Illinois,
California, and Hawaii, and US Code (U.S.C.) regulations associated with interstate
commerce, racketeering, fraud, and violations of the immunities associated with
Congressionally mandated legislation known as Public Law 100, also known as the
Servicemembers Civil Relief Act. This complaint for damages is plead for remedy for
Plaintiffs severe damages incurred by malicious prosecution by FALSE JURISDICTION
, FORUM, VENUE ACROSS STATE LINES by Defendant STATES repetitive and

I.R.M.O. HOFELICH, Howard R. Commander USN

Case Number:

(Federal lawsuit against State of
Hawaii and California for
racketeering)

patterned false prosecution obtained by unlawful and flawed jurisdiction specifically prohibited by Supreme Court case precedent known as International Shoe Company vs. State of Washington, to include flawed and unlawful jurisdiction & venue, by false tort (extortion), by repeat acts of FALSE PERSONATION of HOWARD HOFELICH as "Robert Hofelich", and deliberate concocted false judgment against a fictitious person called "Robert Hofelich" using **nonexistent** leases, nonexistent FICTITIOUS addresses and fictitious unregistered names for an alleged fictitious lease and alleged breach of said false lease, that would be impossible to execute by defense of impossibility.

3. United States Code Title 18, as enacted by Congress of the United States, specifically, clearly, and unambiguously prohibits Fraud and grants lawful jurisdiction, by law enacted by the US Congress, to the Federal court for this US DISTRICT COURT.

"Every person, who under the color of any statute, ordinance, regulation, custom, or usage, of any STATE or Territory..subjects or causes to be subjected, any citizen of the United States, to the deprivation of rights, privileges, or immunities secured by the Constitution and laws, shall be liable to that party injured in an action at lawsuit in equity or other proper procedure for redress.."

"It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities which affect interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprises affairs through a pattern of racketeering activity or collection of unlawful debt." **Title 18 Section 1962**

"Whenever any petition is filed in any district court of the United States under this action, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such an order or orders as may be required to carry into effect the provisions of this section. U.S.C. **Title 18 Section 1968.**

"Any civil action or proceeding under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justices require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and the process for that purpose may be served in any judicial district of the

United States by the marshal thereof, U.S.C. Title 18 Section 1965.

PLAINTIFF HOWARD HOFELICH has been deprived of rights, privileges, and immunities secured by the US CONSTITUTION (4th and 14th amendments) and IMMUNITIES GRANTED BY CONGRESSIONALLY MANDATED LAWS (Servicemembers Civil Relief Act). PLAINTIFF HOWARD HOFELICH has been damaged by rogue judicial actions falsely gained by unlawful foreign judgment by unlawful authority not given the DEFENDANT States by the US Constitution that deliberately, clearly and unambiguously deny due process and equal protection of the law, a violation of the 14th Amendment.

4. Clearly and unambiguously, Congress enacted U.S.C. federal law that gave this court authority to assume jurisdiction over this complaint (petition) against all named and unnamed parties to this action. Although the State defendants may claim 11th amendment immunity to the above complaint by the claim they are not “persons”, Congress certainly conferred immunities, deliberately waiving sovereign immunity of the defendant STATES , for the plaintiff’s complaint, by the enactment of the Congressionally mandated Servicemembers Civil Relief Act to include all immunities conferred by the Act upon Plaintiff. The Servicemembers Civil Relief Act specifically prohibited certain actions by any state court that violated the congressional mandated immunities so conferred on certain military active duty service members. This case centers on defendant individuals employed by state government in Hawaii and California that overtly ignored federal law and broke it repeatedly,

systematically, with intent and malice to do so, for unjust enrichment in the collection of unlawful debt, by false prosecution against the plaintiff, in overt violation of the 4th and 14th Amendments. PLAINTIFF has the 4th amendment right to be reasonably secure in his property. Using false address and names to conduct malicious and wrongful prosecution with flawed writ of execution is not reasonable. Plaintiff has been damaged and unable to adjudicate the matter for substantial justice and requires the intervention of the District court to gain justice, remedy and protection of his Constitutional immunities.

5. The plaintiff is Howard Hofelich, a United States citizen by birth since 1952. Howard Hofelich entered the military on active duty in 1980 and left active duty on August 31, 2006, covered the whole time under the Servicemembers Civil Relief Act that granted congressionally mandated immunities against false prosecution, including immunities against WAIVER OF RIGHTS, and immunities against default judgment and unlawful seizure. These immunities are not within the jurisdiction of the STATES to voluntarily void by incompetent jurors or officers of the court (i.e attorneys and unlicensed process servers acting under the color of law).
6. During PLAINTIFFS active duty with the United states Navy (1980-2006) , Howard Hofelich invested his income as the sole stockholder of a Hawaii corporation known as South Pacific Divers, Inc., operating under the trade name known and registered as "Hawaiian Divers " since 1992, and known as "South Pacific Coral Reef Divers" since 1977. Howard Hofelich has the immunity conferred on him by the

Servicemembers Civil Relief Act during the interval 1980 to the end of 2006, by the written law congressionally mandated known as the Servicemembers Civil Relief Act, for all immunities against unlawful prosecution by STATE courts that ignore federal law. Clearly and unambiguously, the State of Hawaii and California ignored the immunities and entitlements conferred upon Plaintiff by FEDERAL LAW by robbing him of his property by unlawful seizure and engaging in acts of racketeering to obtain unjust enrichment by the claim of unlawful debt against a certain falsely personated "Robert Hofelich", a fictitious person. By these overt rogue judicial actions, the State of Hawaii and California has surrendered its sovereign immunity by willfully disobeying federal law, violating the 4th amendment, and willfully ignoring mandated law enacted by Congress with specific emphasis on immunities of PLAINTIFF, which has clearly lifted the veil of sovereign immunity as it specifically promulgates what the STATE courts specifically can and cannot do, including civil penalties for willful and unlawful acts of "collection of unlawful debt" against the assets, property, immunities and entitlements of PLAINTIFF servicemember. The penalties associated with violating the Servicemembers Civil Relief Act are a reasonable, clear, and unambiguous Congressional voiding of sovereign immunity, intact with civil penalties for doing so, and leave the states liable to civil actions that allow citizens to sue for remedy, and collect for damages by compensation under the congressionally mandated laws of the United States. Plaintiff therefore demands general, special and punitive damages, to include civil penalties to include both fines

and imprisonment against the offending DEFENDANTS who acted in an official capacity as public servants to gain unjust enrichment, operating under the courts of the State of Hawaii and California. In instances where there has been an usurpation of a business opportunity the standard measure of damages is to have the offending party pay to the aggrieved party their profits from their wrongdoing.

7. In April 1994, Federal Bankruptcy (Honolulu) Court sold the rights to use of a name of a business known as King Kamehameha Divers, all of its assets, to include a vessel known to the US Coast Guard as documented vessel #930905, and a collection of compressor equipment to Plaintiff HOWARD HOFELICH, hereinafter referred to as PLAINTIFF.
8. PLAINTIFF paid the federal bankruptcy court for the right and ownership to use the name, enjoy the assets and benefits of the name, and assume ownership of all the assets that were previously used under the name Richard and Elizabeth Smith dba King Kamehameha Divers, Inc. , officially bankrupt and discharged of said debts under the protection of the US Bankruptcy Code, Chapter 7.
9. Prior to April 1994, King Kamehameha Divers was located at 75-5660 Palani Road in Kailua Kona Hawaii, known specifically as the King Kamehameha Hotel in Kailua Kona. In April 1994, upon gaining control of the assets by award from the US Bankruptcy court, PLAINTIFF HOWARD HOFELICH solicited GREG OGIN, a real estate agent advertising the space occupied by the bankrupt King Kamehameha Divers, for the right to tenancy to take over the lease space used by the bankrupt

corporation known as King Kamehameha Divers, Inc. , a business affiliate of PADI, as it was accorded special distinction as a “5 STAR PADI IDC FACILITY “. This address, solely occupied by Plaintiff effective April 1994, was 75-5660 Palani Road, Kailua Kona Hawaii 96740.

10. In April 1994, Greg Ogin completed the lease agreement with HTH corporation , the owner of the King Kamehameha Hotel, a lease contract SIGNED BY PLAINTIFF, and PLAINTIFF HOWARD HOFELICH took possession of the new lease space at 75-5660 Palani Road, in the King Kamehameha Hotel. At the same time (on April 30, 1994), HOWARD HOFELICH terminated his leased business space at 75-5702A Likana Lane, Kailua Kona Hawaii 96740, and moved all of his business assets to 75-5660 Palani Road, Kailua Kona Hawaii. (See Declaration of CLARK COMMERCIAL REALTY property manager GREG OGIN), incorporated herein as EXHIBIT A.

11. In December 1994, Mark McShane concocted a fictitious person for the purpose of fraud, to create an artifice to commit fraud, a fictitious person falsely personated as “Robert Hofelich”, (an swindle apparatus to commit fraud), who defendant McShane claimed had entered into a nebulous and false lease agreement with him and his fraudulent alleged “trust”, a swindle mechanism contrived as “the H Isabelle McGarry Trust of March 19, 1971”, allegedly an Illinois “trust”, at a non existent lease location known as 75-5702A Alii Drive. As there is no such address, as it simply does not exist in Kailua Kona Hawaii (See EXHIBIT A). Unknown to PLAINTIFF,

DEFENDANT Mark McShane had been sued in California Court for fraud and a judgment awarded against his phony corporation (UNIVERSAL MEDICAL MANAGEMENT, INC.) and DEFENDANT Mark McShane, individually, and as a corporation officer of Universal Medical Management, Inc., for allegedly (illegally) using the unregistered California fictitious business name (FBN) called Universal Medical Management, Inc. and conducting fraudulent business under such name not registered to MARK MCSHANE. DEFENDANT Mark McShane attempted to discharge his debt as a judgment debtor as an individual in federal bankruptcy court in 1992 and did again in 2005. In 1992, he tried to hide his assets from the bankruptcy court by claiming he was a trustee of an alleged Illinois trust, creating a swindle mechanism called the H ISABELLE MCGARRRY TRUST to hide his monetary assets . In 1995, Defendant MARK McShane claimed to the California SUPERIOR COURT, NORTH COUNTY, SAN DIEGO Court that he had entered into a lease at such fictitious address called "1630 Pacific Street, Oceanside California" with a fictitious person called "Robert Hofelich", an address which does not factually exist in Oceanside, California. In fact, the real ROBERT HOFELICH lives in ILLINOIS and is the brother by familial connection of PLAINTIFF. The California court unlawfully seized venue and jurisdiction using such fraudulent address ("1630 Pacific Street") falsely alleged to be in Oceanside California, allowing an unregistered fictitious entity (H ISABELLE McGARRY TRUST OF MARCH 19, 1971, to sue this alleged and fictitious (false) person called "Robert

Hofelich”, allegedly a person who resided in Hawaii operating a business called “Hawaiian Divers”.

12. In November 1995, Mark McShane additionally falsely claimed he was the “trustee” for an alleged Illinois Trust “with business interests” (See EXHIBIT B) in California, and filed suit using the California Superior Court to file his “trust” complaint against an alleged defendant called “Robert Hofelich” allegedly residing at a fictitious (nonexistent) business address known as “75-5702A Alii Drive” for breach of contract of an “Equipment Lease Agreement” (**Complaint for Breach of Contract, EXHIBIT B, incorporated herein by reference**) . In doing so, Mark McShane committed fraud (mail and wire fraud), by use of the US Mail and facsimile by claiming a non existent unregistered entity “H Isabelle McGarry Trust” was damaged in California by an alleged and phony “ breach of contract”, as the “entity” did not factually exist and was fictitious, unregistered, and an artifice of fraud. DEFENDANT MCSHANE claimed a false fictitious address for venue at “1630 Pacific Street” Oceanside California, which is also a false and fictitious address, where the contract lease for equipment was allegedly executed for purposes of false venue. Exhibit B is incorporated herein as a California Superior Court (Complaint for breach of contract”) Case numbered as N69610. Mark McShane, a person in bankruptcy avoiding his judgment creditors, claimed the nonexistent entity he created was damaged in its “business interests” in California, at a non existent address (“1630 Pacific Street”), by a fictitious defendant called

“Robbert Hofelich”, who did not even live in California nor Hawaii. Additionally, the so called trust was not factual, as any Illinois Trust requires mandatory incorporation, a legal and mandatory requirement as required by the ILLINOIS TRUST AND TRUSTEES ACT, the prima facie law of the STATE OF ILLINOIS regarding trusts.

13. HOWARD HOFELICH IS AN ILLINOIS RESIDENT since 1966, residing at 609 North Main Street, Iuka, Illinois 62849.

14. A flawed judgment for a nonexistent and illegal plaintiff and nonexistent defendants was executed SPECIFICALLY AND INTENTIONALLY by all defendants across state lines (interstate fraud) with criminal intent to defraud PLAINTIFF, drive Plaintiff out of his business investment, deprive Plaintiff of its entitled income, property and revenue, deprive Plaintiff of its property, and interfere with interstate commerce by multiple acts of blatant fraud and flagrant theft of over \$12,000,000 dollars of property, a violation of the 14th amendment by the denial of due process and equal protection of the law, and the denial of 4th amendment rights by the blatant exercise of theft of property by false judgment (California) , and unlawful seizure (Hawaii). In addition, all defendants conspired to use the business assets of Hawaiian Divers and the business address to further unjustly enrich their income and revenue by taking it away from PLAINTIFF, by the unlawful seizure of PLAINTIFF’s property and depriving him of his property and anticipated profit by conduct of further business (revenue).

13. THIS ACTION is a claim for civil and criminal monetary damages for the intentional,

repetitive (RICO) , and malicious prosecution inflicted on Plaintiff in violation of the 4th amendment clause which clearly states citizens shall be **“reasonably secure in (their) effects , to include titled property, the 14th amendment clause guaranteeing due process and equal protection of the law to all citizens, and that “No state shall make nor enforce any law that avoids or deprives due process nor equal protection of the law”**. PLAINTIFF has been deprived of due process and equal protection of the law, deprived of his congressionally mandated immunities promulgated by the SERVICEMEMBERS CIVIL RELIEF ACT, and has been swindled out of his constitutionally protected collective property by the STATE OF HAWAII and all other named defendants.

14. This action crosses the borders of **three states on multiple occasions (a repetitive and systematic pattern)**, and is a cause of action for malicious damages inflicted on Illinois Plaintiff by two DEFENDANT STATES (CALIFORNIA and HAWAII)(Diversity clause) who have no right to forum nor venue to adjudicate any matter or determine damage to an Illinois trust or Plaintiff of any alleged lease contract, with defendant STATES (California and Hawaii) repetitively failing to provide neither due diligence, due process, nor equal protection of the law by issue of flawed foreign judgment and Writ of Execution to seize property by way of unlicensed process server. This judicial mistake was contrived specifically by creating forum for a false unregistered fictitious trust from ILLINOIS to extort property from PLAINTIFF in HAWAII across state lines, using false legal conclusions and innuendo to repeatedly rob PLAINTIFF of his titled property. Such swindle mechanism (multiple repeat and systematic artifices to commit fraud) was concocted and conducted for the benefit of interstate corporations that would gain

unjust enrichment and benefit from PLAINTIFFS business location and use of PLAINTIFF property, to include 20 passenger USCG documented vessel numbered # 930905 (DEFENDANTS: PADI, SDI, CARL VINCENTI, OCEAN CONCEPTS SCUBA LLC), and multiple state officials and associates such as GENTRYS KONA MARINA, JACKS DIVING LOCKER (associates of Director of HAWAII DLNR), and BERNADETTE CHOCK (a renegade process server with no lawful authority to seize property) and defendant Hawaii attorneys WHITTAKER, KAAPU, LACY, and KRUEGER, and defendant CALIFORNIA attorneys MC RICK NORTON and ERIC MORTON.

15. Defendant STATE OF CALIFORNIA initiated a flawed California judgment against a alleged Hawaii resident, a FICTITIOUS "Robert Hofelich", in March of 1997, concocted in the STATE OF CALIFORNIA Court by malicious "kangaroo court proceeding built on false representations (claims), suppression of exculpatory evidence, false and unlawful jurisdiction, false and unlawful venue/forum', known as the CALIFORNIA SUPERIOR COURT NORTH COUNTY BRANCH Case number N69610, in Vista, California to attack and deprive PLAINTIFF of its business holdings in the STATE OF HAWAII by adjudicating an overtly false complaint alleging a fictitious breach of contract with false names, false addresses and dates and signatures, with false claims of lease of nonexistent equipment, exporting a false default judgment against a fictitious person "Robert Hofelich", who does not even reside in Hawaii, but instead resides permanently in Illinois (Plaintiffs brother). Such rogue judicial action is a clear and unambiguous violation of the US Constitution, as none of the parties in that instant case resided in California nor Hawaii, nor availed themselves of any benefit from either Hawaii nor

California, and the court was fully aware those fictitious persons did not factually exist, nor do business, and were not citizens of either Hawaii or California, and held no valid address, a violation of the statutes against fraud (United States Code), and the 14th Amendment, as only living bona fide citizens have the right to petition for redress of grievance. Certainly, none of these judicial tort actions were reasonable, and PLAINTIFF was damaged by failure of the States to observe the 4th Amendment regarding unlawful seizure.

Statement of the Case.

16. In April 1994, PLAINTIFF dba HAWAIIAN DIVERS vacated the premises known as 75-5702 A Likana Lane in Kailua Kona Hawaii. Note: There is no such address as 75-5702A Alii Drive, and there is no "Robert Hofelich" at this, or any other Hawaii address. In the same month, HOWARD HOFELICH, (PLAINTIFF), did negotiate a lease April 30, 1994, with the King Kamehameha Hotel (HTH Corporation) through property manager GREG OGIN, presently a broker for CLARK COMMERCIAL REALTY, for new lease premises at 75-5660 Palani Road, Kailua Kona Hawaii. There was no hydrostatic test equipment installed at either location, as these tourist premises are completely improper, and such installation would be illegal, unzoned, for any such mounting of industrial equipment. In November 1995, MARK McShane claimed that he had entered an alleged lease as LESSOR, a lease with fictitious ROBERT HOFELICH located at 75-5702A "Alii Drive" and that said lessee person had breached the terms of a lease called an "Equipment Lease Agreement". In the month of November of 1995, Mark McShane claimed he

was a alleged "trustee" for the H Isabelle McGarry Trust, the LESSOR, a contrived swindle mechanism ("Illinois Trust") that did not factually exist. On the same note, Mark McShane had no fiduciary duty except to be truthful to the bankruptcy trustee who was in trust with his anticipated Chapter 7 discharge for his many debts (2 million dollars). DEFENDANT McShane, filed his complaint (incorporated herein as EXHIBIT B) as an alleged Illinois trustee, filed suit in California Superior Court, claiming that the fictitious "trust" had leased, as LESSOR, equipment to a certain "Robert Hofelich", who allegedly was affiliated with "*Hawaiian Divers*", a registered trade name associated and owned by SOUTH PACIFIC DIVERS, Inc., a bona fide Hawaii corporation since 1992. The PLAINTIFF never received the equipment, and there was no such person or addressee that exists in the State of Hawaii that is known as "Robert Hofelich", nor is there an address known as "75-5702 Alii Drive", as it simply does not exist (SEE DECLARATION OF PROPERTY MANAGER GREG OGIN, EXHIBIT A. PLAINTIFF was severely damaged when the CALIFORNIA COURT filed a judgment against the fictitious non existent person known as "*Robert Hofelich*" claiming a default judgment was awarded against "Robert Hofelich" for a "breach of contract". The fraudulent judgment, gained by false venue and false jurisdiction, was exported as a foreign judgment to HAWAII with the specific intent to deprive PLAINTIFF of the use of his property and gain large and unjust enrichment by gaining profit from his premises and assets by false tort (extortion).

17. PLAINTIFF was never served DUE PROCESS in any capacity or manner whatsoever.

18. In 1997, the poisonous and flawed judgment was entered in Hawaii against the assets of a certain "Robert Hofelich", in a WRIT OF EXECUTION and again in a SECOND AMENDED

WRIT OF EXECUTION by the HAWAII THIRD CIRCUIT COURT (Judge RONALD IBARRA) claiming authority under the “ full faith and credit” clause of the US Constitution.

However, they erred, they had the wrong person, and the judgment was contrived of fraud.

19. HOWARD HOFELICH was never served and never participated as a factual witness nor defendant, but his property was unlawfully seized in February 1999 while he was on active

duty, sold to defendant attorneys (WHITTAKER, LACY, KAAPU) by mock auction

CONTRIVED BY PROCESS SERVER BERNADETTE CHOCK, and the proceeds of the repetitive acts of unlawful conversion were executed repeatedly AND SYSTEMATICALLY for unjust enrichment of all defendants. ROBERT HOFELICH was oblivious to the proceedings as he was a resident of ILLINOIS and a civilian employee of the Department of Defense, and was clueless and unaware as to any proceeding in his name against his brother PLAINTIFF HOWARD HOFELICH in Hawaii.

20. PLAINTIFF HOWARD HOFELICH was a United States Navy officer, on active duty since 1980 till August 31, 2006. Currently, HOWARD HOFELICH is living in Hawaii to recover his unlawfully seized property from the UNITED STATES COAST GUARD and eventually return upon completion of the litigation to recover his property, returning to resume his residency in the State of ILLINOIS.

21. PLAINTIFF HOWARD HOFELICH is a long term shareholder of SOUTH PACIFIC DIVERS, Inc. a Hawaii corporation conducting Hawaii business since 1971 and duly formed and registered in the STATE OF HAWAII since 1992. The sole stockholder for said Hawaii corporation is the Helen Isabelle O’Sullivan McGarry Trust of 12-28, an Illinois Trust registered

with the Illinois Dept of Taxation and the US Internal Revenue Service by HOWARD HOFELICH. The sole trustee of said Illinois trust since 1972 is PLAINTIFF Howard Hofelich, an Illinois resident and sole trustee, as registered in the Marion County State of Illinois courthouse in Salem Illinois and with the Internal Revenue Service, as well as the Department of Taxation in the State of Illinois.

22. PLAINTIFF Howard Hofelich has the sole legal fiduciary duty and capacity to act as trustee and presently claims \$12,000,000 in damages as of the year of 2005, individually and to the trust as formally demanded in a secured creditor claim in the US Bankruptcy Court, Southern District of California in the case of Mark McShane who has filed repetitive and sequential bankruptcies, and been discharged repeatedly by the US Bankruptcy Courts by Chapter 7 discharge for his numerous and repetitive debts (swindles), throughout his career as a seasoned swindler of the innocent, and a repetitive tax cheat. Mr. McShane does not operate in good faith and has abused the bankruptcy process. He is not a trustee and never has been a trustee of any Illinois trust as he is not capable of any fiduciary duty nor capacity, and has never declared his trustee duty or position to any bankruptcy court. The latest bankruptcy executed by Mr. McShane was held in the US Bankruptcy Court, Southern District of California, San Diego Courthouse, where DEFENDANT. McShane affirmed he was not a trustee and never has been a trustee of the Plaintiff trust,, and has never filed a single paper for the trust, nor ever paid a single dime to either the beneficiaries nor the Internal Revenue Service, nor the State of California, NOR the STATE OF HAWAII OR ILLINOIS.

23. Trustee Howard Hofelich executed his trustee fiduciary duty by addressing the issue with

the trustee and the IRS, filed an adversarial proceeding in US Bankruptcy Court against Defendant McShane, and reported the loss/theft of his business property and annual income in annual filings with the Internal Revenue Service and in the trusts Schedule C; IRS Form 1041. The US Bankruptcy Court in San Diego, California had no legal authority over the disposition of Plaintiffs property in the State of Hawaii and refused to return PLAINTIFFS PROPERTY, based on its lack of jurisdiction over the State of Hawaii and the States possession of PLAINTIFF property; however, Plaintiff is entitled to his legal constitutional right to his titled property, and demands its immediate return with compensation for its loss of revenue. *Note: In instances where there has been an usurpation of a business opportunity the standard measure of damages is to have the offending party pay to the aggrieved party their profits from their wrongdoing.*

24. Plaintiff further demands protection by ORDER of the federal court for his 4th Amendment right to "reasonable" possession of his property.

" The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

25. Most importantly, the Plaintiff has the inalienable right to be secure in his property and not have unfriendly courts or a rogue process in Hawaii gain unjust enrichment and profit from false flawed foreign judgment, that are not only flawed, but suggest criminal behavior in their creation by attorneys who do not have the competence to provide due diligence. Furthermore, the STATE OF HAWAII had no right to seize the property of PLAINTIFF at the Honokahau Fuel Dock

STATE BUILDING at Kealakehe Parkway in 1999, where PLAINTIFF had expected quiet enjoyment of his STATE lease, by payment of rent, and would not be robbed at gunpoint by a rogue process server (Defendant Bernadette Chock), who had no lawful authority to seize property nor convert it to her chosen design, nor sell it, nor convert it for the benefit of CARL VINCENTI, OCEAN CONCEPTS LLC, or STEPHEN WHITTAKER/DAVID LACY/ERIC MORTON.

26. PLAINTIFF HOWARD HOFELICH was an active duty military officer in the United States Navy from August 1980 to August 31, 2006. His prior exhibit US Government Form DD-214, submitted in this complaint, is incorporated herein by reference, official proof of service from 1988 to August 31, 2006. **EXHIBIT C** pertains as DD-214, is ironclad, prima facie proof of military service, and is incorporated herein as the prima facie proof of congressionally mandated immunity and entitlement. PLAINTIFF was, by law, immune to prosecution and default judgment, nor waiver of his right to claim, since he was deployed overseas, on active duty, and is entitled to immediate recovery of his property stolen by the State of Hawaii and its accomplice attorneys, plus compensation for the damage he has endured by false personation of PLAINTIFF as a "Robert Hofelich", and fraud visited on him by a foreign CALIFORNIA court that had no reasonable nor legal right nor authority to generate an impossible lease, allege a breach of a false impossible contract, and then generate an onerous judgment devoid of legal fact, conclusion, venue, jurisdiction, and basically constructed entirely of fraud and false innuendo.

27. Federal Statutes were violated by State of Hawaii Kona THIRD Circuit Court Special Proceeding 97-004K by allowing forum/venue/jurisdiction to a non existent and fraudulent entity

using a fictitious business name unregistered in any state and by executing a foreign judgment by Writ of Execution for an non existent entity, a non person under the law, to maliciously deprive PLAINTIFF of his titled property, for a false contrived breach of contract at false addresses, using false names, and malicious prosecution against a fictitious defendant (judgment debtor). This is simply not reasonable.

28. Plaintiff does not waive his rights under UNITED STATES CODE (U.S.C. TITLE 50, Public Law 100 §§ 500-596) **Servicemembers Civil Relief Act**, and retains full entitlement to its protection, and immunities, and right to prosecute his several claims for causes of action delayed (§526 of the Civil Relief Act) for the period while he was on active duty, and seeks immediate remedy.

JURISDICTION OF THIS COURT determines there is no statute of limitations by federal law.

20. Plaintiff HOWARD HOFELICH DBA H ISABELLE MCGARRY TRUST notices the court of U.S.C. Title 50 Statute §526, his entitlement under federal law:

“The period of a servicemember’s military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against a servicemember or the servicemember’s heirs, executors, administrators, or assigns.”

PARTIES

21. State of Hawaii violated PLAINTIFF HOWARD HOFELICH’S constitutional rights to be